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B.S., Appellant)	
)	
and)	Docket No. 22-0102
)	Issued: May 19, 2022
DEPARTMENT OF THE NAVY, NAVAL)	
FACILITIES ENGINEERING COMMAND,)	
Great Lakes, IL, Employer)	
)	

Case Submitted on the Record

Office of Solicitor, for the Director

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 29, 2021 appellant, through counsel, filed a timely appeal from a September 14, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the September 14, 2021 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted February 27, 2019 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 5, 2019 appellant, then a 52-year-old painter, filed a traumatic injury claim (Form CA-1) alleging that on February 27, 2019 she sustained injuries to her head, right hip, right knee, and right shoulder when she slipped and fell on ice while in the performance of duty.

By decision dated June 25, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted employment incident of February 27, 2019. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 16, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on November 12, 2019. The hearing representative held the case record open for 30 days for the submission of additional evidence. No additional evidence was received.

By decision dated January 21, 2020, the hearing representative affirmed OWCP's June 25, 2019 decision with modification, accepting that appellant had submitted sufficient medical evidence to establish the presence or existence of the condition for which compensation was claimed, and that she was within the performance of duty, but affirming denial of the claim on the basis that appellant had not submitted sufficient medical evidence to establish a causal relationship between the accepted February 27, 2019 employment incident and her diagnosed condition.

On March 18, 2020 appellant, through counsel, filed a timely appeal from OWCP's January 21, 2020 decision to the Board.

By decision dated June 15, 2021, the Board affirmed OWCP's January 21, 2020 decision, finding that appellant had not met her burden of proof to establish that her diagnosed medical condition was causally related to the accepted February 27, 2019 employment incident.

On August 31, 2021 appellant, through counsel, requested reconsideration. With the request, appellant submitted an August 9, 2021 report from Dr. Navjot Kohli, a Board-certified orthopedic surgeon. Dr. Kohli examined appellant for a follow-up regarding her right shoulder condition. On physical examination of the shoulder, he observed abduction to 90 degrees, internal rotation to her lumbar spine, weakness with abduction and external rotation, positive Neer and Hawkins tests, and good cervical range of motion. Dr. Kohli diagnosed right shoulder rotator cuff arthropathy. He explained that according to his interview with appellant and records, it appeared that appellant did not have any complaints of shoulder pain prior to the incident of February 27,

⁴ Docket No. 20-0895 (issued June 15, 2021).

2019 and that a magnetic resonance imaging (MRI) scan had demonstrated a full-thickness rotator cuff tear. Dr. Kohli opined that the fall exacerbated her pain and the condition in her shoulder necessitating surgery. He explained that falling on an outstretched hand was a known mechanism to cause rotator cuff injury and appellant had denied symptoms prior to the fall. Dr. Kohli opined that in all medical probability, the accepted employment incident of February 27, 2019 caused a permanent exacerbation of a preexisting condition.

By decision dated September 14, 2021, OWCP denied modification of the June 15, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁶ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁹

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

⁵ *Supra* note 2.

⁶ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carbone*, 41 ECAB 354 (1989).

¹⁰ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.¹¹

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted February 27, 2019 employment incident.

Preliminary, the Board notes that it is unnecessary for the Board to consider the evidence submitted prior to its June 15, 2021 decision, because the Board considered that evidence in its decision, finding that it was insufficient to establish her claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹³

On reconsideration, appellant submitted an August 9, 2021 report from Dr. Kohli. Dr. Kohli explained that according to his interview with appellant and records, it appeared that appellant did not have any complaints of shoulder pain prior to the incident of February 27, 2019 and that an MRI scan had demonstrated a full-thickness rotator cuff tear. He opined that the fall exacerbated her pain and the condition in her shoulder necessitating surgery. Dr. Kohli explained that falling on an outstretched hand was a known mechanism to cause rotator cuff injury and appellant had denied symptoms prior to the fall. He opined that in all medical probability, the accepted employment incident of February 27, 2019 caused a permanent exacerbation of a preexisting condition. In this report, Dr. Kohli did not support his medical opinion with sufficient rationale differentiating appellant's preexisting condition from the condition claimed as work related. The Board has explained that such rationale is especially important in a case involving a preexisting condition.¹⁴ Dr. Kohli's opinion regarding causal relationship is conclusory. The Board has held that a medical opinion is of limited value if it is conclusory in nature.¹⁵ While Dr. Kohli noted appellant's outstretched hand during the fall as the mechanism of injury, a medical opinion must explain how the implicated employment incident physiologically caused, contributed

¹¹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see also L.S.*, Docket No. 18-0518 (issued February 19, 2020).

¹³ *See K.V.*, Docket No. 21-0008 (issued November 15, 2021); *B.R.*, Docket No. 17-0294 (issued May 11, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹⁴ *Supra* note 12.

¹⁵ *O.N.*, Docket No. 20-0902 (issued May 21, 2021); *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

to, or aggravated the specific diagnosed condition.¹⁶ Without this explanation, Dr. Kohli's August 9, 2021 report is insufficient to establish appellant's claim.¹⁷

As appellant has not submitted rationalized medical evidence establishing a medical condition causally related to the accepted employment incident of February 27, 2019, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted February 27, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ S.C., Docket No. 20-0492 (issued May 6, 2021); R.S., Docket No. 19-1774 (issued April 3, 2020).

¹⁷ Y.J., Docket No. 08-1167 (issued October 7, 2008); A.D., 58 ECAB 149, 155-56 (2006); D'Wayne Avila, 57 ECAB 642, 649 (2006).